United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

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75-7026

DOCKET # 75-7026

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P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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WILLIAM STEINMAN,

Plaintiff-Appellant,

-against-

MAURICE H. NADJARI, individually and as Special Deputy Attorney General of the State of New York,

Defendant-Appellee.

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On Appeal from the United States District Court for the Eastern District of New York

APPELLANT'S REPLY BRIEF

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3

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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WILLIAM STEINMAN,

Docket # 75-7026

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-against-

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APPELLANT'S REPLY BRIEF

The Brief for Appellee is replete with erroneous statements of fact, and has failed to respond to the essential contentions of Appellant's Brief that Nadjari's gross prosecutorial misconduct conclusively evidenced at bar warranted equitable intervention under the Federal Declaratory Judgment Act pursuant to the Fifth and Fourteenth Amendments of the Constitution; that appellant has suffered great and immediate irreparable injury, and has been deprived of all meaningful access to the State courts; and that the District Court erred in denying the application for a three-judge court and in dismissing the action for a Declaratory Judgment.

POINT I

AS TO THE EXTRAORDINARY CIRCUMSTANCES OF PROSECUTORIAL MISCONDUCT SHOCKING TO THE CONSCIENCE.

A.

In an effort to cover up the serious charge that though appellant had been arrested by Nadjari, he was wilfully deprived of the right to counsel or any preliminary hearing, or any arraignment in a court of law, thus causing irremediable injury to appellant's fundamental rights to a fair trial (Coleman v. Alabama, 399 US 1; Gerstein v. Pugh, US , Feb. 18, 1975, 16 Cr. (3049)); appellee Nadjari now makes the remarkable contention that "since such rights attach only to an arrest, by Steinman's own sworn affidavit, prior to indictment he was never arrested because he was neither booked nor fingerprinted (64-65)" (Brief, p. 31.)

Further, contends appellee, Steinman's allegation "that he was not afforded a prompt arraignment or preliminary hearing concerns a violation, if any, of state, not constitutional, law. See N.Y. Criminal Procedure Law Sec. 140.20, 180.60, 180.70 (McKinney 1971); cf. Mallory v. States, 354 US 449 (1957); McNabb v. United States, 318 US 332 (1943); Fed. R. Crim. p. 5, 5.1"

Directly to the contrary, appellant's complaint

for a Declaratory Judgment, as well as his affidavits in the District Court, unequivocally attested to his "arrest" on September 25, 1973 (4, 13, 15, 18, 65). To argue that Steinman "was never arrested because he was neither booked nor fingerprinted" (Appellee's Brief, p. 31) -- simply because the appellee himself elected not to give him the full measure of his constitutional rights -- is a disingenuous argument that adds new lustre in the realm of reductio ad absurdum.

B.

Appellee's equally bizarre contention that the wilful refusal to arraign Steinman in a court of law following his arrest "concerns a violation, if any, of state, not constitutional law" (Brief, p. 30), is a unilaterial rewriting of the constitutional tenets of Coleman v. Alabama, 399 US 1 and the Due Process Clause of the Constitution. Indeed, in passing, appellee's patent attempt to skirt the issue here tendered of arresting individuals systematically without benefit of court, counsel, arraignment or preliminary hearing, is graphically demonstrated by the fact that the seminal case of Coleman v. Alabama, supra, is barely even mentioned or discussed in the entire Appellee's Brief submitted to this Court, affecting a critical stage of the criminal proceedings involving this appellant.

In Gerstein v. Pugh, supra, the Supreme Court has recently amplified Coleman:

> "Accordingly, we hold that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint on liberty following arrest.***
>
> "Although a conscientious decision that the evidence warrants prosecution affords a measure of protection against unfounded detention, we do not think prosecutorial judgment standing alone meets the requirements of the Fourth Amendment."

Further, quoting from McNabb v. United States, 318 US 332, 343 (1943), the Supreme Court stated:

> "A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication."

C.

Among other glaring misstatements of "fact" contained in appellee's brief, he makes the incredible assertion that "the United States Attorney's Office, before beginning its investigation, had received information from a reliable

informant that Steinman 'had agreed to receive money illegally and improperly influence the actions of government agencies and public officials' (49). The fact of the receipt of this information was not disputed by Steinman and will presumably be explored in more detail at the state trial level." (Appellee's Brief, p. 26.)

The fact is, however, that appellant Steinman had no prior criminal disposition whatsoever. The tapes of all conversations between the so-called "reliable" informant Nick DiStephano, will absolutely confirm the truth that Steinman had been entrapped as a matter of law. To say, as appellee now does, that Steinman had a prior criminal association with the informant and such "was not disputed by Steinman" is, to say the least, an inexcusable misrepresentation of the record below (3, 7, 14, 18-19, 32).

In the same vein, appellee urges upon this Court that "the constitutional nature of Steinman's claims is questionable and may in fact be 'nonexistent' *** Thus, the investigative techniques allegedly used may well involve only the 'nonconstitutional' defense of entrapment. United States v. Russell, supra at 432-33. see N.Y. Penal Law Sec. 40.05" (Nadjari Brief, p. 30.)

Contrarily, under the conclusively documented stream of prosecutorial misconduct shocking to the con-

science at bar (Appellant's Brief, Point I), appellee's argument runs directly counter to this Court's salutary holdings in United States v. Toscanino, 500 F. 2d 267 (CA 2, 1974), that the requirements of due process "extends to the pretrial conduct of law enforcement authorities"; and in United States v. Archer, 486 F. 2d 670 (CA 2, 1973), citing with approval Russell v. United States, 411 US 423, per Rehnquist, J., that the Court might "some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction, cf. Rochin v. California, 342 US 165, 72 S. Ct. 205, 9 L. ed. 183 (1952..."

Indeed, the complaint for Declaratory Judgment in the District Court below was specifically addressed to the Due Process Clause of the Constitution, as well as under the redress-sanctions of Title 28 USC 1343 (2-9), for gross prosecutorial misconduct gravely offensive to the fundamental tenets of decency and to the rule of law (Rochin v. California, 342 US 165; Russell v. United States, 411 US 423; United States v. Archer, 486 F. 2d 670 (CA 2, 1973); United States v. Toscanino, 500 F. 2d 267 (CA 2, 1974); People v. Rao, Matter of Nigrone, 46 App. Div. 2d 343, 2d Dept., 1975).

D.

Appellee Nadjari has completely avoided addressing himself in response to appellant's crucial contention regarding Nadjari's unremitting policy of shocking prosecutorial misconduct (Appellant's Brief, Point III).

Directly applicable is Perez v. Ledema, 401 US 27, at p. 82, wherein the Supreme Court recently stated in a concurring opinion by Brennan, White and Marshall, JJ:

> "Where the ground is bad-faith harassment, intervention is justified whether or not a state prosecution is pending. Intervention in such cases does not interfere with the normal good-faith enforcement of state criminal law by constitutional means, and does not necessarily require a decision on the constitutionality of a state statute. It simply prevents particular unconstitutional use of the State's criminal law in bad faith against the Federal plaintiff." (Underscoring ours.)

In the acid test of "normal good-faith enforcement of state criminal laws by constitutional means," we earnestly submit to the Court that federal intervention is not only proper at bar, but is urgently imperative to preserve the integrity of the judicial process and enjoin further irreparable injury to the rule of law.

Contrary to appellant's misstatements to this Court as aforestated, the District Court denied the application for a three-judge court not because of any failure to attack the constitutionality of a statute, nor even

because the appellant's complaint for a Declaratory Judgment presented a constitutional question lacking in substantiality, but rather, solely on the stated ground that: "When what in substance being challenged is neither a statute, nor the policy underlying the statute, rather the activities of a state officer appointed under the authority of the statute, resort to a three-judge court is inappropriate (cases cited)." (91) (Underscoring ours.)

In this connection, appellant's brief submitted to this Court, Point III, categorically contended that the District Court erred in so holding -- in view of appellee's demonstrated fixed general policy of engaging in grave systematic misconduct in the employment of wholesale entrapment methods in this and numerous other cases; the systematic short-circuiting of defendants' constitutional rights to arraignment in a court of law, and to their right to counsel in preliminary proceedings during a critical stage of the proceedings against them; the repeated ruse of mock "convictions" of undercover "defendants" by unlawful means involving perjury, subornation of perjury and wilful deceit of the courts -- in direct defiance of this Court's admonition in Archer, supra; the persistent false and fraudulent representation to the appellate Courts, state and federal, that former

Chief Judge Stanley H. Fuld had expressly sanctioned and approved this prosecutorial tactic (81-83)*.

Directly pertinent here is Alee v. Medrano, 416 US 802, supra, wherein the Supreme Court recently held:

> "Isolated incidents of police misconduct under valid statutes would not, of course, be cause for the exercise of a federal court's equitable powers. But'(w)e have not hesitated on direct review to strike down applications of constitutional statutes which we have found to be unconstitutionally applied.' Cameron v Johnson, 390 US 611, 620, 20 L Ed 2d 182, 88 S Ct 1335, citing Cox v Louisiana, 379 US 559, 13 L Ed 2d 487, 85 S Ct 476; Wright v Georgia, 373 US 284, 10 L Ed 2d 349, 83 S Ct 1240; Edwards v South Carolina. Where, as here, there is a persistent pattern of police misconduct, injunctive relief is appropriate." (Underscoring ours.)

Moreover, the Court further erred in that appellant's claim for injunctive relief by a three-judge court under Younger standards did not, in any event, bar alternate relief for a Declaratory Judgment, without convening a three-judge court (Samuels v. Mackell, 401 US 66, 73).

POINT II

AS TO THE GREAT AND IMMEDIATE IRREPARABLE INJURY TO APPELLANT, AND DENIAL OF ALL MEANINGFUL ACCESS TO THE STATE COURTS.

A.

Appellee wrongly contends that the application for a three-judge court was aptly denied because "in the com-

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*Astonishingly, appellee disposes of appellant's contention that he deliberately misrepresented Chief Judge Fuld's position regarding the unlawful use of convicted underground "defendants", by describing it glibly as "an obvious misunderstanding over what the former Chief Judge said to whom" (Br. p. 3). The record of Chief Judge Fuld's own diary entry of a telephone call received from Mr. Harris, Chief of Appeals Bureau of Nadjari's office on April 5, 1973 -- denoting "no sanction or approval of tactics to be used as described by Mr. Harris" -- completely contradicts this palpably false assertion (71-78, 81-83).

plaint in the instant case, no statute was even remotely challenged" (Brief, 10). We respectfully submit to the Court, in reply, that the record below flatly contradicts this patently misleading assertion.

In the affidavit for a three-judge court, as well as in oral argument and in the Memorandum of Law submitted in the District Court, the central thrust of appellant's contention was that Section 63 Executive Law and Executive Order No. 58 issued thereunder -- under authority of which the appellee was designated to manage and conduct all proceedings against appellant -- were unconstitutional as applied (55-56, 73-74).

Indeed, appellee's misstatement aforenoted is flatly contradicted in the very opinion of Judge Costantino below, as follows: "Plaintiff argues that the statute, Executive Law Sec. 63 and Executive Order No. 55, under which the office of the Special Deputy Attorney General was set, are unconstitutional as applied to him because agents of the Special Deputy Attorney General allegedly acted improperly by depriving him of his constitutional rights." (90)

In addition, the crucial issue of non-access to the state court, by reason of the facial unconstitutionality of Section 149 Judiciary Law, was timely presented to the District Court below, both in the oral argument to convene

a three-judge court, and in submission of a supporting Memorandum of Law, "as violative of the independence of the judiciary and of the due process rights of this plaintiff (appellant) to a fair and impartial trial before a court so constituted." (94-95)

Appellee contends that appellant's claim that Section 149 Judiciary Law, subd. 2 -- likewise facially unconstitutional -- involving the vastly diminished substantial rights of litigants before the Extraordinary Term, should be disregarded because it is "raised for the first time on appeal." (Brief, page 16.)

In reply, we respectfully submit that the entire statute was directly before the Court, as aforenoted. Moreover, a facially unconstitutional statute may be judicially noticed, and is therefore properly before this appellate tribunal sua sponte for a determination whether, on its very face, such a statute affords meaningful access to the state court and is inherently violative of the equal protection of the laws to which appellant and all others similarly situated are entitled under the Due Process Clause. (Richardson on Evid. 10th ed., sec. 17-18, 25; Lamar v. Micov, 114 US 218, 223; Mills v. Green, 159 US 651.)*

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*Appellant's direct attack, via a Declaratory Judgment action against the facial unconstitutionality of Sec. 149 Judiciary Law is now pending in the New York Court of Appeals (Steinman v. Nadjari).

The identical issue is likewise pending in that Court, in an Article 78 proceeding in Moritt v. Extraordinary Term of the Supreme Court, et al. It is anticipated that the latter case will be argued in the Court of Appeals during May 1975 Term.

B.

Appellee Nadjari cavalierly contends that the issue of the constitutionality of the state statutes, under and by which the appellant has been indicted, not only "lacks a substantial constitutional question, but is, in fact, frivolous." (Brief, p. 11.)

Our respectful submission to the Court, in reply, is that the patent unconstitutionality of the statutes, on their very face, has destroyed every vestige of an adequate remedy of law or meaningful access to the state courts to vindicate appellant's consti tutional rights to a fair and impartial trial. (App. Points I and II.)

In support of appellant's contention in the District Court below that he had no adequate remedy at law, and had been deprived of all meaningful access to the state courts (8), he argued that "the Statute under which the Extraordinary Special and Trial Term of the Supreme Court was convened by the Governor, Section 149 Judiciary Law of the State of New York, was inherently violative of the Separation of Powers doctrine guaranteed against encroachment by the Due Process Clause of the Fifth and Fourteenth Amendments of the Constitution of the United States, in that by its terms, the Governor is granted the unlimited power to terminate at will the appointment of the Judge presiding thereat, and to replace that Judge with another at any time

and for any reason, and that, therefore, the said statute, as well as its counterpart, Article 6, Section 27 of the New York State Constitution, are unconstitutional and void on their face, as violative of the independence of the judiciary and of the due process rights of this plaintiff to a fair and impartial trial before a court so constituted." (94-95)

A state statute directly affecting the legal competence and jurisdiction of the Court in which appellant is to be tried; a state statute facially violative not only of the independence of the judiciary (Sec. 149 Judiciary Law, subd. 1), but also of the equal protection clause of the Fourteenth Amendment, ibid., subd. 2; and, finally a state statute, as applied (Sec. 63 Executive Law and Executive Order No. 58), which subverts the Attorney General into an automaton of the Executive in the management and conduct of all proceedings in the very Court presided over by the Governor's own designated judge removable at will -- present, in all, far from insubstantial or frivolous constitutional questions. Indeed, they go to the very heart of appellant's claim that he has suffered great and immediate irreparable injury, without meaingful remedy at law in the state courts. (8-9)

In 22 Corpus Juris Secundum 108, pp. 299-300, it is stated:

"There can of course, be no valid prosecution and conviction for crime unless the court in which the prosecution is instituted or carried on is legally created and constituted, or is at least a de facto court."

C.

In his responsive Brief to this Court, appellee Nadjari makes no serious attempt to controvert appellant's arguments addressed to the facial unconstitutionality of these statutes, but obliquely states, merely, that "the federal separation of powers doctrine does not apply to the states" (Brief, p. 12); that People v. Davis, 67 Misc. 2d 14 rejected "the identical claim" made by appellant herein; and that, "aside from the power to assign and remove the justice, the Governor 'has no power to do more,' and 'has not attempted to do more.' Saranac Land and Timber Co. v. Supreme Court, 220 NY 487, 492 (1917)." The appellee is not only wrong in each of these contentions, but persists in advancing insupportable arguments which had been raised and answered, and presumably interred, in the Court below.

Thus, both Saranac Land and Timber Co. v. Supreme Court, supra, and People v. Davis, supra, concerned themselves exclusively with a construction of Sec. 149 Judiciary Law, in its pre-amended form, with absolutely no reference to the newly added power conferred upon the Governor to terminate the assignment of the justice and name another

justice in his place. Accordingly, Saranac and Davis have absolutely no relevance as authority at bar -- except, by implication, for the very opposite of the appellee's representations to this Court.

As to the contention that "the federal separation of powers doctrine does not apply to the states", our respectful submission in reply is that a facially unconstitutional state statute, in which the "whole power" of the Executive is placed over the judiciary (Dreyer v. Illinois, 187 US 71; Story, Const. 5th ed. Sec. 393), is no less applicable in constitutional doctrine to the government of the State of New York than it is to the federal government (Gautier v. Ditmar, 204 NY 20; People ex rel Burby v. Howland, 155 NY 270, 282; Matter of Guden, 171 NY 529, 531; People ex rel Broderick v. Morton, 156 NY at p. 144; Federalist Papers, 47, 48, 51).

In Dreyer v. Illinois, supra, the Supreme Court stated the applicable rule:

> "A local statute investing a collection of persons not of the judicial department, with powers that are judicial, and authorizing them to exercise the pardoning power which alone belongs to the governor of the state, presents no question under the Constitution of the United States. The right to the due process of law prescribed by the 14th Amendment would not be infringed by a local statute of that character. Whether the legislative, executive, and judicial powers of a state shall be kept altogether distinct and separate, or whether

> persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to another department of government, is for the determination of the state. And its determination one way or the other cannot be an element in the inquiry, whether the due process of law prescribed by the 14th Amendment has been respected by the state or its representatives when dealing with matters involving life or liberty. 'When we speak,' said Story, 'of a separation of the three great departments of government, and maintain that that separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely distinct, and have no common link of connection or dependence, the one upon the other, in the slightest degree. The true meaning is, that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments; and that such exercise of the whole would subvert the principles of a free Constitution.' Story, Const, 5th ed. 393." (Underscoring ours.)

D.

Appellee avers to this Court that "even if we read Steinman's claim to be that the Governor's power constitutes an encorachment upon the judiciary, thereby resulting in the possible denial of an impartial trial, his claim is unfounded. He has in no way shown or even hinted that the Governor who appointed this Extraordinary Term or the many governors who in the past have established similar terms have done so with any purpose other than that

prescribed by the statute, i.e., when the public interest requires such action." (Brief, p. 13.)

In this misleading Niagara of words, appellee once again beclouds the central issue that it is not the Governor's purpose that is controlling as the test of constitutionality, but rather, "by what may, by its authority, be done". (Stuart v. Palmer, 74 NY 183, 189; Providence Bank v. Billings, 29 US 514; Vick Wo v. Hopkins, 118 US 356, 373-4; Watson v. Buck, 313 US 387, 85 L Ed 1416, 136 ALR 1426; Nashville, C. & St. L Ry. v. Walters, 294 US 405.) The appellee has completely side-stepped the gravely pernicious in-built potentials of Sec. 149 Judiciary Law, just as he has studiously ignored appellant's central theme that the statute in issue is facially violative of the equal protection clause of the Fourteenth Amendment (Appellant's Brief, Point II, pp. 55-62).

Wholly contrary to appellee's intimation that other former governors have established "similar terms" without incident, our respectful submission to the Court is that all such prior terms were created under a valid statute as it existed in pre-amended form, unburdened by (a) the unconstitutional restrictions offensive to the independence of the judiciary, and (b) the procedural limitation and substantially diminished rights inimical to a fair trial

and to the equal protection of the laws.

D.

Additionally, as urged in the District Court below, appellant has been, and is being, subjected to great and irreparable injury by the fact that his presently precarious financial situation may force him to abandon his right to defend, and compel him to drop the multiplicitous appeals now pending in the state and federal courts on constitutional grounds for want of foreseeable financial resources (96). We respectfully submit that the Court erred in holding that this did not constitute irreparable injury comparable to that of Dombrowski v. Pfister, 380 US 479 (103-4).

Appellant's mounting counsel fees and expenses for defending the pending state prosecution against him and appealing any conviction therefrom and possible further appeals therefrom, have resulted in an enormous drain against his financial resources.

He would be ineligible for assistance as an "indigent" for the reason that, though he is the holder of a state pension, which now hardly covers his basic requirements of subsistence for his family, he would nevertheless be ineligible for relief as an "indigent" person (see Dolan Properties, Inc. v. Schoolcraft, 75 Misc. 2d 1084; 350 NYS 2d 292, 1973).

He has barely any savings, and is now deeply in debt.

In addition to the mounting litigation, a separate Declaratory Judgment action testing the constitutionality of the statute is now pending in the appellate courts, both state and federal. The appellant would have to commit himself further into debt in order to prosecute the enormously extensive appeals therefrom to the New York Court of Appeals and the United States Supreme Court.

Charting appellant's future, appellee's brief now states:

> "Moreover, Steinman's allegation of prosecutorial misconduct as it relates to the affirmative defense of entrapment will be presented to and decided by the trial jury in its determination of Steinman's guilt or innocence. NY Penal Law Sec. 40.05 (McKinney 1967). Further, all those issues raised in the trial court, including that of the judge's alleged bias, may be subject to full review by judgment appeal in the Appellate and again in the Court of Appeals, by post-conviction remedy (see NY Criminal Procedure Law Sec. 440.10 (McKinney 1971), by certiorari in the United States Supreme Court, and by habeas corpus and additional appeal in the federal courts" (Brief, p. 22).

The only realistic alternative now starkly facing him would be an unjust, unacceptable and truly involuntary plea of guilty to some reduced charge under the indictment, or to submit to an unappealed conviction, should there be any. Thus, caught in the vise of a Catch-22 situation, the appellant now stands in grave jeopardy of irreparable injury in the pending State criminal proceedings against him, for

which he has no meaningful remedy at law in the state courts.

In net effect, to meet this hydra-headed assault by appellee Nadjari against appellant's constitutional rights, in both state and federal forums, on the trial level, and in the appellate echelons up to the United States Supreme Court and then conceivably back again via federal habeas corpus relief, as intimated by the District Court below (104), would so likely enfeeble and impoverish appellant into ever deeper debt and frustration as to impel him into abandoning his just fight to redress his rights altogether.

We earnestly submit that the fairly imminent danger of such eventuality, constituting great and immediate irreparable injury in the extraordinary situation at bar, should be duly considered by this Court, especially where as here, the appellee's own shocking misconduct is the very inducing cause of appellant's untenable predicament.

In reply to appellee's brief (pp. 22-23), this prosecution vastly transcends mere "cost, anxiety, and inconvenience of having to defend against a single criminal prosecution." (Younger v. Harris, 401 US 37, 46; Douglas v. City of Jeannette, 319 US 157, 164; Watson v. Buck, 313 US 387, 400), or the financial disarrangements caused by the "usual and customary course" of criminal prosecutions (cf. Reed v. Littleton, 275 NY 153, 157), grounded as it

is on an extraordinary compote of extreme bad faith, harassment, scandalously shocking prosecutorial misconduct, and patent unconstitutionality of the statute purportedly creating the "court" and arm of the grand jury that produced this indictment.

In Illinois Central R.R. Co. v. Miss. Public Service Co., 133 F Supp. 304 (3-Judge Court), the Court stated:

> "The equitable jurisdiction of the federal courts is defeated only by an adequate legal remedy available in said courts. It is not sufficient to defeat federal equity jurisdiction that there be a remedy at law, but the remedy at law must be plain, adequate, and complete; that is, it must be as complete and as efficient as the equitable remedy. In case of serious doubt as to the adequacy of the remedy at law, the federal courts resolve this doubt in favor of their jurisdiction in equity; ***" (Underscoring ours.)

In Donovan v. Pennsylvania, 199 US 279, the Supreme Court, citing Chicago General R. Co. v. Chicago B & Q R. Co., 181 Ill. 605, 611, enunciated the applicable rule:

> "When irreparable injury is spoken of, it is not meant that the injury is beyond the possibility of repair, or beyond the possibility of compensation in damages, but it must be of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law." (Cases cited.) (Underscoring ours.)

Certainly, in the unprecedented situation presented at bar, a prosecutor should not be permitted to so multiply his own crimes of prosecutorial misconduct as to drown the

accused in a frustrating maelstrom of protracted and costly litigation.

CONCLUSION

BY REASON OF APPELLEE NADJARI'S EXTRAORDINARY PROSECUTORIAL MISCONDUCT SHOCKING TO THE CONSCIENCE, APPELLANT HAS SUFFERED GREAT AND IMMEDIATE IRREPARABLE INJURY, AND HAS NO MEANINGFUL ACCESS TO THE STATE COURTS.

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE REVERSED AND UPON THE CONCLUSIVELY DOCUMENTED FACTS AT BAR, THE INDICTMENT SHOULD BE DECLARED NULL AND VOID UNDER THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

Respectfully submitted,

March 13, 1975

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WILLIAM STEINMAN

Plaintiff,

against

Appellant

MAURICE H. NADJARI, etc.

Defendant.
Appellee

Docke 75-7026

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF Kings ss.:

ROSE BRODSKY, *being duly sworn deposes and says that* s *he is* Secretary for appellant *the attorney for the above named herein. That* s *he is over* 21 *years of age, is not a party to the action and resides at*

That on the 14th *day of* March, *19* 75, s*he served the within* two copies Appellant's Reply Brief *upon* HON. MAURICE H. NADJARI *attorney for the above named* Appellee *by depositing a true copy of the same securely enclosed in a post-paid wrapper in the Post-Office—a Branch Post-Office—Station—Sub-Station—Finance Station—Letter Box—Mail Chute—Official Depository maintained and exclusively controlled by the United States at* 16 Court St. Bklyn NY Brooklyn NY *that being then the post-office of the attorney serving the same; directed to the said attorney for the* Appellee *at No.* 2 World Trade Center, New York *N. Y., that being the address within the state designated by* h im *for that purpose, or the place where* he *then kept an office, between which places there then was and now is a regular communication by mail.*

Sworn to before me, this 14th *day of* March, *19* 75

Rose Brodsky

ARTHUR NUSSBAUM
Notary Public, State of New York
No. [illegible]25
Qualified in [illegible] County
Commission Expires March 30, 1976